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February 23, 2010

E-File

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-001

ENTERED
Office of Proceedings
FEB 23 2010
Part of
Public Record

Re: STB Docket No. AB-6 (Sub-No. 379X), The Burlington Northern
And Santa Fe Railway Company – Abandonment Exemption – In
Garfield and Logan Counties, OK

Dear Ms. Brown:

Attached for e-filing is the Reply To Renewal Of Pending Joint Motion For
Substitution Of Trail Manager.

If you have any questions, please call me.

Sincerely,



Karl Morell

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 379X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
IN GARFIELD AND LOGAN COUNTIES, OK

REPLY TO RENEWAL OF PENDING JOINT MOTION FOR
SUBSTITUTION OF TRAIL MANAGER

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Attorneys for:
BNSF Railway Company

Dated: February 23, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 379X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
IN GARFIELD AND LOGAN COUNTIES, OK

REPLY TO RENEWAL OF PENDING JOINT MOTION FOR
SUBSTITUTION OF TRAIL MANAGER

BNSF Railway Company ("BNSF")¹ hereby replies to the Renewal of Pending Joint Motion For Substitution of Trail Manager filed by Montoff Transportation Company ("Montoff") on February 17, 2010 ("Renewed Motion").

By decision served October 27, 1998, in this proceeding, the Surface Transportation Board ("Board") granted the request of the Oklahoma Department of Transportation ("ODOT") for the issuance of a notice of interim trail use ("NITU"). Shortly thereafter BNSF and ODOT entered into an Interim Trails Use/Railbanking Agreement.

On August 31, 2009, ODOT and Montoff filed a joint motion ("Motion") requesting that the Board vacate the existing NITU and issue a replacement NITU permitting Montoff to substitute for ODOT as the interim trail manager.

By reply filed on September 3, 2009 ("September Reply"), BNSF opposed the Motion on two grounds. First, BNSF had questions as to whether Montoff is a "qualified private organization" within the meaning of 16 U.S.C. § 1247(d) ("Trails Act"). Second, BNSF was

¹ Effective January 20, 2005, The Burlington Northern And Santa Fe Railway Company changed its named to BNSF Railway Company.

concerned about its retained rights in the rail corridor and the track materials on the line. On October 14, 2009, Montoff requested that the Motion be held in abeyance.

BNSF, ODOT and Montoff have recently entered into a Tri-Partite Agreement which, among other things, protects BNSF's retained interests in the rail corridor and the track materials on the line. That Agreement, however, becomes effective only if Montoff acquires BNSF's reactivation rights on the line. On February 17, 2010, Montoff filed a Notice of Exemption in STB Finance Docket No. 35354 to acquire BNSF's reactivation rights which is currently pending at the Board. BNSF is concurrently filing in support of Montoff's request in that proceeding.

Under these circumstances, BNSF can acquiesce in the requested substitution of the interim trail manager in this proceeding **only if** the Board first permits the transfer of the reactivation rights to Montoff in STB Finance Docket No. 35354. Should the Board deny the transfer of the reactivation rights to Montoff, the Tri-Partite Agreement cannot take effect and BNSF's rights and interests would no longer be protected. In such an event, BNSF would need to enter into a different arrangement with Montoff and ODOT before agreeing to the substitution of interim trail manager.

As BNSF pointed out in the September Reply, under the Trails Act, the Board may not issue a NITU, or a replacement NITU, if the abandoning carrier does not consent to its issuance. *Rail Abandonments – Use of Rights-Of-Way As Trails*, 2 I.C.C.2d 591, 598 (1986)(Trails Act “permits only voluntary arrangements”).

In summary, BNSF's consent to the issuance of a replacement NITU is conditioned on the Board permitting the transfer of the reactivation rights to Montoff. In the event the Board denies the transfer of the reactivation rights, BNSF opposes the issuance of a replacement NITU.

Respectfully submitted,

A handwritten signature in black ink, reading "Karl Morell", written over a horizontal line.

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Attorneys for:
BNSF Railway Company

Dated February 23, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served by U.S. Mail, first class, postage pre-paid, this 23rd day of February, 2010 upon counsel for Montoff Transportation LLC and the Oklahoma Department of Transportation.


Karl Morell